BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND AT DEHRA DUN.

CLAIM PETITION NO. 62/2010

Rajendra Prasad Uniyal, S/o late Sri Jagdish Prasad Uniyal, Patwari, Nagar Nigam, Dehradun.

……Petitioner

Versus.

1. State of Uttarakhand through Secretary, Ministry of Urban Development, Uttarakhand, Dehradun.
2. Mukhya Nagar Adhikari, Nagar Nigam, Dehradun.

…….Respondents.

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the Respondent No. 1.

JUDGMENT

DATED: JANUARY 29, 2013.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman : Oral)

1. This claim petition has been filed by the claim petitioner under Section 4 of the Uttarakhand Public Services Tribunal, Act, 1976 for seeking following relief:

" To direct the respondents to grant the pay scale of `. 3050-4500 instead of `. 2610-3500 w.e.f. the date of appointment i.e. 28.6.1997 along with other consequential benefits and interest @ 18% per annum."

2. The brief admitted facts to the parties are that the petitioner was appointed as Patwari in Dehradun Nagar Palika since 28.6.1997 at the pay scale of Rs.775-1025/- vide annexure-6 to the claim petition. Thereafter, the Tax Superintendent (Land) recommended his pay scale at Rs. 950-1500/- on 17.9.1997 and the said note was submitted to the Executive Officer. The Executive Officer recommending the case of the petitioner, obtained the approval of the Chairman of the Municipal

Board at the pay scale of Rs.950-1500/- on 23.10.1997. Thereafter the said pay scale was not given to him. The claim petitioner submitted a representation to the Municipal Board, Dehradun. Meantime the Nagar Palika, Dehradun was upgraded as Corporation. The office vide note dated 7.11.2001 dealt the representation of the petitioner by the Tax Superintendent (Land) and he again recommended that the petitioner has been confirmed on 14.7.1998 and he should be allowed to draw the pay scale of Rs. 950-1500 (3050-4500) which was revised by the pay commission and made applicable from the year 1996 and he further indicated in his note to the Up Nagar Adhikari that the Chairman of the Nagar Palika has already given him the pay scale of Rs. 950-1500 on 23.10.1997. On the said note the legal opinion was obtained which is Annexure-13 to the claim petition.. Annexure-8 is a letter and legal opinion dated 27.1.2002 by which the District Government Counsel after considering the entire record opined that the Government order dated 28.10.1989 granting a pay scale of Rs. 950-1500/- to Patwaris by the Govt. is applicable in the case of the claim petitioner and he should be given the pay scale of Rs. 950-1500 which had been revised retrospectively after the pay commission's report w.e.f. 1986 and later on it was revised as Rs. 3050-4500 w.e.f. 1996. The petitioner was found to be entitled to the pay scale of Rs. 3050-4500/- from the date of appointment. Thereafter the petitioner made several representations before the competent authority to grant the said pay scale to the petitioner. Again that representation was dealt in the year 2008 and a note was submitted on behalf of the office to the Mukhya Nagar Adhikari and it was recommended that the petitioner's case for granting the pay scale of Rs. 950-1500 (3050-4500) be sent to the Government. The M.N.A. referred it to the government vide Annexure-4 to the claim petition. Note sheet did not refer the other orders or the notes in this regard by which the matter has been dealt with. The note sheet Annexure-4 to the claim petition only reveals that the petitioner relied his claim on the basis of the G.O. dated 28.10.1989. Consequent upon the said order, Annexure-3 was sent to the Government. Respondent No.2 has stated in his W.S. that no communication has been received regarding the payment of the

salary from the Government till today. When nothing was heard from the side of the Government or from the side of Respondent No.2, the petitioner again made a representation and the same was dealt with by the office and the legal assistant vide its note Annexure-2 to the claim petition in the year 2009 indicating that the Chairman of the Nagar Palika in the year 1997 has approved the pay scale of Rs. 950-1500 (3050-4500) and thereafter the Government notification dated 28.10.1989 granting the Patwaris the pay scale of Rs. 950-1500/- applies in the case of the petitioner so the direction may be issued to allow the said amount. The said note was also submitted but no final order was passed. The Respondent No. 2 has only stated in his W.S. that the Annexure-2 was not in accordance with the Government order, hence it is not admitted. It is also admitted to the petitioner that he is still in service as Patwari and he has not retired from the service. District Government Counsel's report, which was submitted in the year 2002, was dealt with by the Tax Superintendent (Land) on 4.2.2006 by submitting a note to higher officers and he again recommended that according to the opinion of the District government Counsel (Civil), he may be given the pay scale of Rs. 950-1500(3050-4500). The M.N.A. passed a vague order that whether at the time of the appointment, the post was lying vacant; whether the post on which he was appointed, was in the pay scale of Rs. 950-1500/- and he also asked the office to obtain the position in other Nigams about the pay scale of the Patwaris. Vide Annexure-15 he had been allowed the selection grade and one increment in the year 2009. When nothing was heard from the Government or from the side of the Respondent, this claim petition was filed.

3. The Respondent No.2 has filed the W.S. on record in which he has denied that the pay scale as claimed by the petitioner i.e. of `.3050-4500/- of Lekhpal, is not applicable in the Nagar Nigam, Dehradun and the Government G.O. dated 28.10.1989, by which a pay scale of Rs. 950-1500 (3050-4500) was allowed to Patwaris, is not applicable in the case of the petitioner. Respondent No.2 has further alleged that they have referred the matter to grant him the pay scale of `. 3050-

4500/- to the Govt. but the said letter has not been replied by the State Government. The opinion of the District Government Counsel is against law. The matter is pending before the Government. At last the Respondent No.2 has claimed that claim petition may be dismissed.

4. The State Government Respondent No.1 has not filed any reply to the claim petition. The Ld. A.P.O. Sri Umesh Dhaundiyal appearing on behalf of State, Respondent No.1 stated that the State is a formal party, hence he has not filed the W.S./ C.A. After filing of the W.S., by the Respondent No. 2 none is appearing for Respondent No.2 to press his contentions.

5. I have heard the leaned counsel for the petitioner as well as Ld. A.P.O. appearing for Respondent No. 1 and perused the record. None has appeared on behalf of Respondent No. 2.

6. Ld. Counsel for the petitioner contended that the petitioner was initially appointed by the Nagar Palika in the pay scale of Rs. 775-1025/-. Thereafter the Tax Superintendent (Land) of the Nagar Palika moved to the Execution officer of the Board that the petitioner has been appointed as a Patwari (Lekhpal) on 28.6.1997 and he is entitled to a pay scale of Rs. 950-1500/-. The said proposal was placed before the then Chairman of the Nagar Palika, Dehradun and he accepted it on 23.10.1997. Thereafter, the petitioner made several representation to release the said pay scale to him but no heed was paid to his request. The Respondent No.2 obtained the legal opinion from the District Government Counsel as well as from the legal cell and both persons submitted their opinion in favour of the petitioner and they opined that the petitioner is entitled to a pay scale of Rs. 950-1500/- at the time of appointment and they further alleged that later on the pay commission report was made applicable so the said pay scale was revised w.e.f. 1996 at Rs. 3050-4500/-. Ld. Counsel for the petitioner further contended that the G.O. dated 28.10.1989 , Annexure-5 to the claim petition is very clear and the Samta Samiti was constituted by the Government after the anomalies were raised by the different sections of the employees against the then pay commission report and that Samta Samiti clearly removed the anomaly about the pay scale of the Patwaris and the pay scale of Rs. 950-1500/- was allowed to the

Patwaris w.e.f. 1986. Later on it was revised according to the new pay commission @ Rs. 3050-4500/-. The Ld. Counsel for the petitioner further contended that the Niymawali of Group C & D Employees, 1985 is also applicable in the case of the Nagar Nigam and they are entitled to get the same pay scale which is granted to the Government employees.

7. Ld. Counsel for the petitioner further contended that inspite of the service upon the Respondent No.2, they are not appearing before the Court and they casually submitted the W.S. and have alleged the Government order dated 14.2.1990 is applicable and the G.O. dated 28.10.1989, Annexure-5 is not applicable. Para-5 of the W.S. is as follows:-

यह कि संलग्नक पांच का शासनादेश नगर निगम पर लागू नहीं होगा, निगम पर शासनादेश संख्या 10551/19–1–89–89 सा/सा 89 नगर विकास अनुभाग–1, लखनऊ दिनांक 14–2–90 लागू ह ।

यह कहना गलत है कि यदि किसी वतनमान की स्वीकृति शासनादेश के विरूद्ध किन्ही कारणों से की गयी, उक्त को भुगतान किया जाना होगा। यहां यह स्पष्ट करना है कि जो वेतनमान लेखपाल हेतु निगम में लागू है, उसके विपरीत बिना शासन की अनुमति के भुगतान नहीं हो सकता है। अतः यह याचिका स्वीकार करने योग्य नहीं है।

8. It is also contended that the petitioner is entitled to a pay scale of Rs. 3050-4500/- Ld. Counsel further contended that he has tried his label best to find the said G.O. which has been cited in the W.S. in Para-5, but he could not locate it. He further contended that the respondent No. 2 has relied his case on the said G.O., hence it was obligatory on it to file the copy of the said G.O. He also referred the Rule-12 (3) of the U.P. Public Services Tribunal (Procedure) Rules, 1992 applicable to Uttarakhand in which it is specifically provided that the documents referred to in Clause -1 (W.S.) shall also be filed along with reply and the same shall be marked as R-1, R-2, R-3. The compliance of the said rule was not made and the respondent could not find the said G.O. inspite of his best efforts and hence not able to file the same before the Court. Ld. Counsel for the petitioner further pointed out that Ld. A.P.O. appearing for Respondent No.1, could not demonstrate the G.O. relied upon by Respondent No.2. This Court also requested both the parties to provide the said G.O. but of no avail.

9. Ld. Counsel for Respondent No.1 refuted the contention of the petitioner. It is to be made clear here that Ld. A.P.O., Sri Umesh Dhaundiyal appearing on behalf of State, has specifically stated that the State is a formal party and he need not to file the W.S. on behalf of the State Government. W.S. has not been filed on behalf of Respondent No.1.

10. Ld. A.P.O contended that the petition is barred by laches and there is an inordinate delay in filing the petition so the delay cannot be condoned and the petition is barred by limitation. He further contended that the petitioner is claiming the relief to grant the pay scale since 1997 till date but that relief is barred by limitation as well as by laches. Ld. A.P.O. further contended that this Court has no jurisdiction to entertain this petition because in 1997 the State of Uttarakhand had not been carved out and the Uttarakhand State Public Services Tribunal had not been constituted. The State was caved out in the year 2000 and the Tribunal was constituted in the year 2001 and the petitioner is seeking the relief since 1997, the territorial jurisdiction to hear the petition lies to the U.P., Public Services Tribunal. He further contended that the controversy has been resolved by the Hon'ble Apex Court in the case of State of Uttarakhand Vs. Umakant Joshi 2012(1) UD 53.

11. Ld. Counsel for the petitioner further refuted the contention of Ld. A.P.O. and contended that the Respondent No.1 on one hand is informing the Court that he is a formal party and on the other hand he is taking pleas before the Court without any pleading even after the admission of the petition. The point of limitation as well as point of delay and laches and the jurisdiction would have not been taken by way of counter affidavit by the State. Ld. Counsel for the petitioner further contended that the judgment rendered in the State of Uttarakhand Vs. Umakant Joshi (supra) is not applicable in the facts and circumstances of this case. He further contended that in the instant case the cause of action is a continuing cause of action, so the petitioner is entitled to get the relief from this Tribunal.

12. In view of the above pleadings and the contentions, the points which arose for consideration is that whether the petition is barred by latches

and limitation and whether this Court has territorial jurisdiction to hear the petition and whether the petitioner is entitled to get the relief claimed in the petition.

13. I have gone through the entire record as well as the judgment referred by the Respondent No.1.

14. Before entering into controversy I would like to place the legal position about the admissibility of the claim made by the petitioner. The petitioner's simple case is that the petitioner was appointed on 28.6.1997 by the Nagar Palika, Dehradun. He had been a trained Patwari in the Revenue Department. The Tehsildar of Dehradun relieved him for being appointed as Patwari in the Nagar Palika, Dehradun on 24.4.1997, thereafter he was appointed in the Nagar Palika, Dehradun. The petitioner again made a representation to grant him the pay scale of Rs. 950-1500/- according to the G.O. applicable to the Patwaris. The note was moved by the Tax Superintendent (Land) recommending his case and the case was recommended and ultimately it was allowed by the Chairman on 23.10.1997. The Respondent No.2 in his W.S. has admitted that the petitioner was appointed in the pay scale of Rs. 775-1025/- thus, the appointment has not been challenged by the Respondent No.2. Now the only controversy remains, as to whether he is entitled to get the pay scale of Rs. 950-1500 (3050-4500). Section 74 of the Municipality Act clearly provides that, the permanent employees of the Ministerial Group can be appointed by the Chairman of the Nagar Palika. It is also provided that the appointing authority will be the Chairman. The services of Patwaris were under the direct control of the Chairman inspite of enforcement of Central Service Rules 1966 applicable to Municipalities. Later on this Municipal Board, Dehradun was upgraded and it was declared Nagar Nigam. By virtue of the up gradation of the Nagar Nigam, the U.P. Nagar Nigam Adhiniyam applicable to the Uttarakhand, became applicable. Section -106 of the said act empowers the Nagar Nigam to create the post in its Corporation. It is specifically provided U/s 577 (ङ) of the Nagar Nigam Act which is as under:-

नियत दिन से ठीक पूर्व (यथास्थिति म्यूनिसिपल बोर्ड अथवा नगर पालिका परिषद) इम्प्रूवमेंट ट्रस्ट, डेवलमेंट बोर्ड या स्थानीय प्राधिकारी के नियोजन में होने वाले सभी पदाधिकारी तथा कर्मचारी धारा 196 और 107 में किसी बात के होते हुये भी इस अधिनियम के अधीन अस्थायी रूप से नियोजित (निगम) के पदाधिकारी तथा कर्मचारी हो जायेंगे और [1][जब तक वे इस अधिनियम के अधीन सृजित पदों पर नियुक्त न किये जायें या धारा 112–क के अधीन बनायी गयी नियमावलो द्वारा सृजित किसी केन्द्रीय सेवा में अन्तिम रूप से ले न लिये जायें अथवा उनकी सेवायें ऐसी नियमावली के अनुसार समाप्त न हो जाये, वे वही वेतन और भत्ते पायेंगे और ऐसी नियमावली में अन्यथा की गयी व्यवस्था को छोडकर , सेवा की उन्हीं शर्तों के अधीन रहेंगे जिनके कि वे नियत दिन के ठीक पूर्व अधिकारी अथवा अधीन थे,]

Perusal of the said section clearly provides that if a Nagar Palika is upgraded to a Corporation, their employees would be the employees of the Corporation till their centralized services are not constituted u/S 112 (क) or their services had not been terminated under rules, they will get the same salary, allowances at which they had been appointed in the Municipal Board. The appointed date has been defined U/S 2(2): the date on which the Corporation has been constituted by the Gazette Notification. Thus, it is clear from the legal position as emerged that any employee who was getting any pay scale, would be entitled to the same pay scale which he was drawing at the time of merger. It was admitted that the Corporation was constituted after 1997 when the petitioner had been appointed by the Municipal Board.

15. It is in dispute whether the notification issued by the State Government on 28.10.1989 by which the Samta Samiti removing the anomaly of the pay commission, granted the pay scale of Rs. 950-1500 to the Patwaris is applicable or not. The Respondent No.2 has denied in Para-5 of the W.S. that this Annexure -5 (G.O. of 1989 supra) of the claim petition is not applicable in the case of the petitioner. The respondent No.2 has stat ed that G.O. No. 10551/19-189-89सा0/ सा0 89 Nagar Vikas Anubhag-1 Lucknow dated 14.2.1990 is applicable in the case of the petitioner. The said notification had not been annexed along with the W.S., whereas it was obligatory on the petitioner according to Rule 12(3) Rule-12 (3) of the U.P. Public Services Tribunal (Procedure) Rules, 1992 applicable to Uttarakhand in which it is specifically provided that the documents

referred to in (W.S.) shall also be filed along with reply and the same shall be marked accordingly. The Nagar Nigam, Respondent No.2 has not annexed that G.O. Inspite of the best effort of the Court also, I could not find the said G.O.,. Neither the Ld. Counsel for the State nor the Ld. Counsel for the petitioner could produce it before the Court. So it cannot be said, in the absence of the G.O. and without perusal of the said G.O. that the G.O, Annexure-5 (G.O. of 1989 supra) which was issued by the government is not applicable in the case of the petitioner. The Respondent No.2 has also alleged that they have sent a letter to the Government for their guidance about the payment of the claim of the petitioner about the pay scale. The copy of the said letter has been filed and a note to that effect has been filed by the petitioner. The said letter or the note thereof did not contain the G.O. dated 14.2.1990 relied upon by the Respondent No.1. Thus, the vague allegation has been made by the Respondent No.2 while sending this reference to the Government. It is very surprising that this matter is pending since long and the opinion of the legal cell of the Nagar Nigam (Annexue-2) dated 4.2.2006 is pending before the Corporation. The note dated 7.1.2001 in which the legal opinion of the District Government Counsel was taken, was also pending. Further on 6.6.2006, again the M.N.A. desired to know the pay scales of the Patwaris in other Nagar Nigams. Perusal of the documents reveals that the reports of the D.G.C. as well as the legal cell were pending since long and calling for the report of the other Nagar Nigams, was also pending before the Nagar Nigam and meanwhile a note sheet was moved by the office in which no previous details or notes pending have been indicated; and no G.O. of 14.2.1990, on which Respondent No.2 is relying at present in the W.S., has been referred in the note. Thus, the Corporation is by one pretext or other avoiding to grant of the pay scale to the petitioner. Although, the said pay scale has already been granted to him by the then Chairman of the Nagar Palika vide Annexure-1 to the petition. It was only the ministerial act to release the amount; a formal sanction was required though this matter was lingering on since long and the Respondent No.2 has also contested this petition before this court also very leisurely.

16. It is admitted case of the parties that the petitioner was employed on 26.6.1997 at the pay scale of Rs. 775-1025/- by the Chairman of the Nagar Palika and he was later on granted the salary @ 950-1500/- by the Chairman from October, 1997. It is not denied that the said orders were passed by the Chairman of the Nagar Palika, Dehradun. It is also not denied that the services of the petitioner were merged into the services of Nagar Mahapalika. It is also evident from the record by annexure-4 that the services of the petitioner were verified till 30.11.2007. Thus, it is apparent he was appointed in the Nagar Mahapalika, Dehradun as Patwari and the said note also takes note of it that the revised pay scale of Patwari according to the Government order is of Rs. 950-1500/- w.e.f. 1986 and the said pay scale has further been revised at Rs. 3050-4090/- later on. Thus, the services of the petitioner had been continuously in the service of the respondents. There is no denial on record by the different notes that he is not entitled to get the said amount. I find force in this contention of the Ld. Counsel. Thus, the petitioner is entitled to get the pay scale of Rs. 950-1500 (3050-4500) .

17. Where the question of territorial jurisdiction is concerned, it is settled position of law that cause of action of a matter is a decisive question of the territorial jurisdiction of the Court. The cause of action implies a right to sue. The material fact which are imperative on the suiter to allege and prove constitute a cause of action. Cause of action is not defined. It has, however been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, nor supports his right to the judgment of the Court. Negatively put, it would mean that everything which if not proved, gives the defendant a minimum right to judgment, would be part of cause of action. It is important beyond any doubt for every claim there has to be a cause of action, if not, the complaint or the pleadings in the petition either before the High Court or before the Tribunal as the case may be, shall be rejected summarily. Clause-2 of Article-226 of the Constitution of India reads as under:-

[(2) The power conferred by clause(1) to issue directions, orders or writs to any Government, authority or person may

also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.]

Section 20 (C) of C.P.C. reads as under:-

(a) the cause of action, wholly or in part, arises.

[1][***]

Although, in view of Section 141 of C.P.C the provisions of CPC are not applicable to the writ petitions or petition before the Tribunal. Phraseology used in Section 20 (C) of the CPC and Clause 2 of Article 226 being in paramateria, the decisions of the Courts rendered on interpretation of Section 20 (C) shall apply to the writ proceedings also. It is also a settled position of law that the entire bundle of facts pleadings in the petition, need not constitute a cause of action as what is necessary to be proved before, the petitioner can obtain an order or decree is the material facts. The expression material fact is also known as integral facts. Sometimes the integral facts may have a single cause of action and some times it had a part cause of action in the territory of one Court and part cause of action may be in the territory of the other Court and there are also certain integral facts in which there is a continuous cause of action till the petition is filed before the Court. The part cause of action of the integral facts may be alike of a continuing cause of action. What would be the territorial jurisdiction of a particular case or a petition before the Court, Tribunal and the High Court is to be decided by the cause of action. It is the tritie of law that if there is single cause of action and the petitioner has pleaded a bundle of facts which did not disclose the cause of action or integral facts for the decision of the claim petition, the said Court where the single cause of action has arisen, would have the territorial jurisdiction over the matter. If the integral facts constitute a part cause of action in one of the territory of the Court, Tribunal or High Court, it should be filed in any of the Courts where the part cause of action has arisen. If the cause of action arises in part in different Courts, it would be open to the litigant who is *Dominus Litis* to have its *forum conveniens*. The litigant has a right to go to the Court where the part of

cause of action has arisen. It is incorrect to say that the litigant chooses any particular Court. The choice of the litigant is by reason of the jurisdiction of the Court being attracted by part cause of action arising with a jurisdiction of the Court. The continuous cause of action is alike a part cause of action theory and it is also relevant for the decision of the limitation as well as for filing the petition.

As discussed above, now I would like to visit the various pronouncements of the Hon'ble Apex Court in this background. In the single cause of action theory, the **Hon'ble Apex Court in the Aligarh Muslim University Enterprises (P) Vs. V.Vinay Engineering Enterprises (P) 1994 (4) SCC 710, in para 2** has held as under:-

> "*2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh,, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of Jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable*"

Thus in that case the total work was executed in Aligarh and the Arbitrator was also of the Aligarh who discharged his functions in Aligarh in arbitration proceedings merely because the firm who contacted to construct the work was of Calcutta based firm. There was nothing to do with the work at Calcutta. The High Court of the Calcutta entertained the writ petition ignoring the facts no part cause of action arose within the jurisdiction of the Calcutta High Court. The petition had error of lack of jurisdiction so it was not sustainable.

In **Union of India Vs. Adani Export Ltd 2002(1) SCC 567**, the Hon'ble Apex Court has held that in order to confer jurisdiction of High Court or the Tribunal to entertain a petition, it must disclose that the integral facts pleaded in support of it, constitute a cause so as to empower the Court to decide the dispute in the entire or a part of it arose within its jurisdiction.

In **National Textile Corporation Ltd.Vs. Haribox Swalram[6] (2004)9 SCC 786 Hon'ble Apex Court in para 12.1** has held as under:-

> *"12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed*."

Thus, it is apparent from the above decision of the Hon'ble Apex Court that the petition must have nexus on the basis whereof a prayer can be granted.

18. In the case of **Kusum Ingots & Alloys Ltd. Vs. Union of India 2004(6) SCC 254** (before Hon'ble Justice V.N.Khare, C.J. and Hon'ble Justice S.B.Sinha and Hon'ble Justice S.H.Kapadia, JJ) the appellant was a company registered under the Indian Companies Act. Its registered office was at Mumbai. It obtained a loan from the Bhopal Branch of State Bank of India. Respondent no. 2 issued a notice for repayment of the said loan from Bhopal purported to be in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Questioning the vires of the said act, a writ petition was filed before the Delhi High Court by the appellant which was dismissed on the ground of lack of territorial jurisdiction. The only submission made on behalf of the appellant before the High Court as also before the Supreme Court was that the constitutionality of a parliamentary Act was in question, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition. The question that arose for consideration before the Supreme Court was whether the seat of Parliament or the legislature of a State would be a

relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution.

A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum. Therefore, a writ petition questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi."

19. In the case of **Nasiruddin Vs. State of U.P. 1975 (2) SCC 761** the decision of the Hon'ble Supreme Court in the above case is the authority on the proposition of part cause of action theory for the territorial jurisdiction. In the Nasirduddin case which has been decided by a bench of five Hon'ble Judges of Supreme Court (Ray, A.N. (CJ) Mathew, Kuttyil Kurien Krishnaiyer, V.R. Fazalali, Syed Murtaza JJ) United Province High Courts (Amalgamation) Order 1948 provides that the chief Court of Avadh was amalgamated in the existing High Court of Allahabad and it was provided in the amalgamation order, the new High Court shall have the jurisdiction of any area out side the united provinces. All such original appellate and other jurisdiction as under the law in force immediately before the appointed day, is exercisable in respect of any areas out side the United Provinces by either of the existing High Court. The new High Court shall have in respect of any area out side the United Provinces all such original appellate and other jurisdictional as under the law in force immediately before the appointed day is exercisable in respect of that area in the High Court in Allahabad. According to the Amalgamation Order 1948 the judges of the new High Court shall sit at Allahabad or at any such other place in United Province as Chief Justice may, with the prior approval of the Governor of the United Province appointed and there will be a strength of judges

not less than two in number as nominated by the Chief Justice by the new High Court for the said seat and they will sit in Lucknow after the concurrence of the Governor of the Avadh in order to exercise in respect of cases arising in such areas and the Chief Justice was empowered to confer the jurisdiction of the cases in Lucknow also. Clause 14 proviso (2) of the amalgamation order further provides that the Chief Justice in its discretion, order 'any case' or 'class of case arising' in the said area, shall be heard at Allahabad. A dispute arose when a writ petition was filed by the petitioner before the Lucknow High Court for quashing an order passed by the State Appellate Tribunal, Luciknow and the said writ petition belongs to Ruhelkhand Division, which was within exclusive jurisdiction of the seat of Allahabad; the point of jurisdiction was raised that the Lucknow Bench has no jurisdiction to entertain and decide the said petition and a full court of the Allahabad High Court held that because the matter arose from the Ruhelkhand area, the specific jurisdiction lies with the seat of Allahabad High Court so the seat of Lucknow has no jurisdiction to entertain the said petition. So the appeals were preferred before the Hon'ble Apex Court. The Hon'ble Apex Court has held that amalgamation order describes Allahabad High Court as the new High Court. The two High Courts have amalgamated in the new High court and the seat of the new High Court is at Allahabad or such place as may be determined (Lucknow), there is no permanence attached to the Allahabad. The Lucknow was the seat of the Government and Allahabad had its own historical facts that the High Court was also there before the amalgamation order. It was further held, the Chief Justice cannot reduce the area of Avadh by taking away the jurisdiction from Avadh to Allahabad. Once the power is exercised in Clause-14 about the seat of the Avadh, the words used "as the Chief Justice may direct", means that exercise the power to direct what areas in Avadh area are for exercise of jurisdiction by judges at Lucknow Bench. Once that power is exercised, it is exhausted. In pith and substance and the spirit of the order, the Lucknow became the seat in respect of the cases arising in area in Avadh. While deciding the case of Nasiruddin, the Hon'ble Apex Court in para 37 has held as under:-

“The meaning of the expression "in respect of cases arising in such areas in oudh" in the first proviso to paragraph 14 of the order was answered by the High Court that with regard to applications under Article 226 the same will be "a case arising within the areas in oudh, only if the right of the petitioner in such an application arose first at a place within an area in oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in oudh and if the subsequent orders either in the revisional or appellate stage were passed by an authority within an area in oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government, the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.

The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action is well-known. If the cause of action arises wholly or in part at a place within the specified oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in oudh it would be open to the litigant who is the dominus litis to have his forum conveniens.

The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the 519 jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court".

20. It is apparent from the perusal of the above judgment that even if a person is posted anywhere or a policy decision regarding any district is taken at Lucknow at the principal seat of the Government, the Hon'ble Apex Court has held the Allahabad High Court, in case the district falls within territorial jurisdiction of the new High Court and the seat of Lucknow of the Allahabad High Court would have the jurisdiction to entertain the petition. Thereafter, the matter came up again before the Hon'ble Apex Court in **U.P. Rashtriya Chini Mill Adhikari Parishad Vs. State of U.P. 1995 (4) SCC 738**. Hon'ble Apex Court following the decision of Nasuriddin's case has held as follows:-

"The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow than Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action " is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in part within the

specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action." While reaching the above conclusion this Court kept in view the plain language of clause 14 of the Amalgamation Order. No provision of the Code of Civil Procedure was noticed, referred to or taken into consideration directly or indirectly. The territorial jurisdiction of a Court and the "cause of action" are interlinked. To decide the question of territorial jurisdiction it is necessary to find out the place where the "cause of action" arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case holds good even today despite the incorporation of an Explanation to Section 141 to the Code of Civil Procedure.

There is no dispute that the Amalgamation Order is a special law which must prevail over the general was This Court interpreted the relevant expression in Clause 14 and did not take any support from any general law. The discussion by the Division Bench of the High Court by evolving the so called theory of "exercise of jurisdiction revolving on the place of sitting" as compared to the theory of "cause of action" is wholly misconceived and has no legal basis whatsoever. This part of the High Court judgment is mentioned to be rejected"

21. Thereafter the matter came up for consideration in **the Uttaranchal Forest Rangers Association (Direct Recruitment) and others Vs. State of U.P. and others 2006(10)SCC 346** before the Hon'ble Apex Court. The Hon'ble Apex Court in Para 44 of its decision has held as under:-

> "*44. The second impugned order dated 12.4.2004 is further vitiated for the following reasons:*
>
> (b) ***Forum***.- *The seniority list under challenge in the second writ petition was the seniority list of the Uttaranchal State Government of 2002 and such challenge could not have been made before the Lucknow Bench of the Allahabad High Court.*
>
> (c) ***Parties***.- *None of the direct recruits who would be directly affected by the order were made parties to the writ petition. Therefore the High Court did not have the benefit of competing arguments in the matter. Even though, the Principal Secretary of the State of Uttaranchal was made a party, the said party was never served. The only respondent which was heard was the State of U.P. which had no stake in the matter at all since all the writ petitioners before the Lucknow Bench of the Allahabad High Court were employees of the State of Uttaranchal on the relevant date. It is, therefore, evident that the relevant material was not placed before the Allahabad High Court for the purpose of deciding the writ petition. Accordingly, the permission had to be taken from this Court by the present appellants to prefer the SLPs*."

Thereafter **in State of Uttarakhand and another Vs. Umakant Joshi 2012(1) UD 583 (Division Bench of Hon'ble G.S. Singhvi andHon'ble Sudhansu Jyoti Mukhopadhaya, J.J.),** in which the relief claimed by the petitioner was found within the jurisdiction of the Allahabad High Court, Hon'ble Apex Court has laid down that the Allahabad High Court has got the jurisdiction to entertain the writ petition as filed by the petitioner. The Respondent No.1 (hereinafter called petitioner) filed a writ petition before the Uttarakhand High Court for issuance of

mandamus to the State Government of U.P. as well as to the State Government of Uttarakhand to promote him w.e.f. 16.11.1989 i.e. the date the persons junior to him were promoted to Class-I post. The petitioner was awarded adverse entries in the annual confidential report for the year 1987-88, 1988-89, 1989-90 and 1991-92. Apart from it, departmental enquiry was also initiated against the petitioner between July, 1996 and March 1997. Thus, enquiries were culminated in issuance of order dated 23.1.1999 whereby the punishment of reduction to the minimum of the pay scale was imposed on the petitioner. As a sequel to this, an adverse entry was made in the A.C.R. of the petitioner for the year 1995-96. The petitioner made a representation on 14.1.2000 to the State of U.P. for consideration/ review of the order of punishment. He also filed writ petition in the Allahabad High Court for quashing the order of punishment. The State of Uttaranchal (now Uttarakhand) and the High Court of Uttaranchal (now Uttarakhand) were carved out on 9.11.2000. The said writ petition was transferred by the Allahabad High Court to the Uttarakhand High Court and the said writ petition was disposed of by relegating the petitioner's petition to the Uttarakhand Public Services Tribunal. During the pendency of the petition before the Tribunal, the Govt. of Uttarakhand considered the representation of the petitioner and punishment order was withdrawn vide order dated 11.8.2005 and expunged the adverse entry recorded in the A.C.R. of the petitioner for the year 1995-96. The Tribunal taking cognizance of the said fact, decided the petition as infructuous. Thereafter, the petitioner again filed a writ petition before the Hon'ble High Court of Uttarakhand claiming in the petition that the petitioner may be given the benefits of the time scale and selection grade respectively w.e.f. the date of completion of 8 years and 14 years of service and notional promotion to Class-I post from 1989. He also placed reliance of his claim upon the orders passed in favour of Sri R.K.Khare who was promoted to Class-I post w.e.f. 16.11.1989. He also relied upon the order dated 22.1.2001 passed by the Government of State of U.P. and Uttarakhand and he also claimed the seniority w.e.f. 16.11.1989. It is apparent from the perusal of the record that the petitioner was bypassed or made

junior, promoting the other juniors to a higher scale due to the adverse entries as well as punishment awarded by the State of U.P. The State of U.P. was never made a party to the writ petition and no officer, who was aggrieved by the said relief, was made party to the writ petition. He independently sought the relief of Mandamus to fix his seniority w.e.f. 16.11.1989 and the seniority of selection grade as well as other benefits w.e.f. 1989. One of the appellant before the Hon'ble Supreme court was allotted to the new State of Uttarakhand and the other appellant was appointed in U.P. and he opted the Hill Cadre in 1992. The main contention of the petitioner before the Hon'ble Supreme Court was that the Hon'ble High Court of Uttarakhand which came in existence on 9.11.2000, did not have the jurisdiction to entertain the writ petition filed by the petitioner and to issue a mandamus to the State Government to promote him to Class-I post w.e.f. 16.11.1989, more so because the issue is raised and the writ petition involved examination of legality of the decision taken by the State of U.P. to promote Sri R.K. Khare w.e.f. 16.11.1989 and other officers who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. The State of Uttarakhand also raised a contention before the Hon'ble Apex Court that the High Court was not competent to issue direction of promotion of the petitioner w.e.f. a date prior to the formation of new State and that too without hearing the State of U.P. that is why the High Court did not examine the issue of jurisdiction to entertain the prayer made by the petitioner. In this regard the total cause of action arose before the State of U.P. and no part of cause of action arose in the State of Uttarakhand. In view of the above facts, the Hon'ble Apex Court held that the entire petition was a misconceived petition and as such the High Court of Uttarakhand has no jurisdiction to entertain the petition.

22. The petitioner has filed the instant petition for seeking a relief that the petitioner may be granted a salary of Rs. 3050-4500/- from the date of appointment i.e. 28.6.1997 instead of Rs. 2610-3500/- as has already been paid, along with interest. Thus, the relief claimed by the petitioner is for the payment of the difference of the salary which has accrued in favour of the petitioner. Thus, the petitioner was a Patwari

appointed by the Nagar Palika, Dehradun and later on his services were taken by the Corporation and he was not paid the entire salary. According to the 7th constitutional amendment the local bodies have been given a constitutional status and the Municipalities whatever named called for a transactional areas, would be a constitutional functionary by virtue of the Chapter 9 A of the Constitution of India. Thus, the functions of the Municipal Board and its functionaries are derived from the Constitution and the Municipal Body being a constitutional functionary, it has an independent entity. The Chairman, who has appointed the petitioner as well as granted the pay scale as claimed by the petitioner, was within his function as a functionary of Municipal Board. As has been discussed above, the Chairman was well competent to grant the pay scale and it was only the ministerial act which was to be complied with by the subordinates of the Chairman. Later on the legal opinions were also in favour of the petitioner. Thus, the entire cause of action arose within the Municipal Board as well as the Nagar Nigam, Dehradun which is situated in the newly carved out State of Uttarakhand, hence this Court has got the jurisdiction to entertain this petition on this ground alone. Apart from that, while determining the jurisdiction, the Court has to see the cause of action also as discussed above. The petitioner has claimed in this petition difference of pay scales as on the date of the petition also. The petitioner has been deprived of day-to-day and month-by-month by not awarding the said pay scale to him. Thus, it is a recurring and continuous cause of action. The cause of action after the creation of State of Uttarakhand by non payment of the salary as claimed by him is accruing month to month. The pay scale which has to be granted, had already been granted by the Chairman, though, the ministerial act had to be discharged by the office not by the functionary. The functionaries working under a constitutional functionary, are creating obstruction for payment of salary. Thus, it being a continuous as well as part cause of action, the petition is maintainable in the Uttarakhand Public Services Tribunal. In case of salary the cause of action actually continues from month to month. In view of the above discussion the judgment of Hon'ble Apex Court rendered in Umakant Joshi (supra) is

not applicable in facts and circumstances of this case. The judgment of Constitutional Bench rendered in Nasiruddin's case (supra) is applicable in this case.

23. Whereas the limitation and delay is concerned, the petitioner has claimed the difference of his salary from the date of his appointment from 28.6.1997. In the case of salary, the cause of action actually continues from month to month; that however cannot be a ground to overlook the delay in filing the petition. It will depend upon the facts and circumstances of each case. The doctrine of laches in Courts, is not an arbitrary or technical doctrine. It may be regarded by the conduct of the petitioner that he has waived the remedy. The petitioner has put the other parties in a situation in which it would not be reasonable to place him if the remedies were afterward to be asserted. It always has to be kept in mind that the lapse of time and delay are most important factors. But in every case if an argument against the relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by a statute or limitation, the validity of the defence must be tried upon principles substantially equitable. Two circumstances which are always to be seen in such cases, are the length of delay and the nature of the acts done during the interval; it might affect either party and cause a balance of justice or injustice in taking one course or other so far as it relates to the remedy. If the Court finds the petitioner's case is genuine and while assessing the factor of delay, the Court has also to see the effect of delay in inflicting not only hardship and inconvenience but also injustice on the third party. When no third party rights have been created, the equitable relief, though within a reasonable time may be granted by the Courts. It is also a settled position of law that repeated representations is not an adequate remedy to take care of the delay. Each case will depend upon the facts of each case. A petition filed beyond a reasonable period of three years, normally the Court rejects the same or restrict the relief which could be granted in a reasonable period of about three years. In case of salary, if it is found that the claim of the petitioner for release of the pay scale as claimed is sustainable in law, then the Court can mould the relief but in no event

grant any relief for exceeding of a period of three years from the date of presentation of the petition before the Court. The Limitation Act 1963 is also applicable to the petition filed before the Tribunal. In **Shiv Das Vs. Union of India 2007 SCW 1487** the petitioner was retrenched in 1983 from the Army and his claim petition was also rejected by the appellate authority immediately thereafter, he filed the writ petition before the High Court for seeking the pension in the year 2005. The Hon'ble Apex Court held in para 10 & 11 as under:-

> *"10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.*
>
> *11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition*"

24. In view of the above, the petitioner is entitled to get the notional pay scale of Rs. 950-1500 (3050-4500) instead of Rs. 775-1025/- from the date of his appointment. The petitioner had been claiming the difference of pay since his date of appointment i.e. 28.6.1997. The petitioner is entitled to receive the said difference of back pay only for three years prior to the date of filing of the petition. The rest claim for

payment of difference of pay is barred by limitation and laches. However, the Respondent No.2 will fix his notional pay and other benefits with effect from the date of his appointment but he will be entitled to the monetary benefits of three years prior to the date of presentation of the petition. The petition is allowed to the above extent. The parties shall bear their own cost.

Sd/-

(JUSTICE J.C.S. RAWAT)
CHAIRMAN

DATE: JANUARY 29, 2013
DEHRADUN.